

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

C&J Associates Pest Control,

CURTIS DUNCAN

Plaintiff,

VS.

CV-06-884-MEF

BOB RILEY
DRAYTON NABERS
JAMES MAIN
TROY KING
KATHY SAWYER
COURTNEY TARVER
JUNE LYNN
JUDY COBB
RAY BRESSLER
JOHN BLOCH
JOE DEBROW
BRUCE ALVERSON
LINDA SHELTON
KNOX PEST CONTROL
et al.
DEFENDANTS

PLAINTIFF'S SUPPLEMENT MOTION FOR THE MAGISTRATE JUDGE TO ISSUE AN ORDER TO FOR ALL THE DEFENDANTS ATTORNEYS TO MAIL PLAINTIFF A COPY OF ALL THEIR FILINGS WITH THE COURT A TIMELY MANNER AND PLAINTIFF'S SUPPLEMENT MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Comes now Plaintiff Curtis Duncan, Sole Proprietor/Owner of C & J Associates Pest Control requests that your Honor issue an order for all the Defendants Attorneys to mail Plaintiff a copy of all their filings with the Court in a timely manner. This motion is a supplement to Plaintiff pending motion filed on November 29, 2006 concerning the Defendants Attorneys not mailing Plaintiff a copy of all their filing

with the Court in a timely matter. Plaintiff did not receive Defendants filing of the Report of Parties' Meeting due to be filed in Court by January 15, 2007, mailed by Defendant Attorney Richard Cater January 23, 2007 until January 25, 2007 by mail. (See Exhibit 1). The Parties met on January 12, 2007, the Defendants attorneys failed to communicate to Plaintiff what was being filed with the Court for 14 days.

Attorney Cater states in the Report of the Parties' Planning Meeting that "subsequent to the Planning Meeting, Defendant Mental Health and Mental Retardation offered to make available to the Plaintiff, without formal discovery, the public records relevant to the bid that is subject to this lawsuit. This may be accomplished by the Plaintiff contacting Attorney Benjamin Albritton, attorney for Mental Health and Mental Retardation." Attorney Albritton was one of the attorneys who were not present at the Parties' meeting. The Defendants have already improperly obstructed Plaintiff from attaining access to the public bid file for over two years, now have obstructed Plaintiff from viewing the public bid file before the Court ordered Scheduling Conference for January 29, 2007. This is more clear and convincing evidence that the Defendants and their Attorney are still obstructing Plaintiff from his statutory and constitutional rights to write and litigate his lawsuit. The information that is in the public bid file is essential to Plaintiff's Opposition to the Defendant's Motion to Dismiss. It is inappropriate for the Defendants to file a Motion to Dismiss while they have continued to intentionally obstruct Plaintiff from viewing a public bid file. The Defendants are clearly trying to obstruct Plaintiff from uncovering their conspiracy.

Under Rule 15 (a) a party can amend its pleading once as matter of right any time before the service of a responsive pleading. The filing of a pretrial Motion to Dismiss under Rule 12 does not cut off the right of the Plaintiff to amend the complaint. *James V. Hurson Assos, Inc. v. Glickman*, 229 F.3d 277, 282-283 (D.C. Cir. 2000); *Duda v. Board of Education*, 133 F.3d 1054-1057 n.2 (7th Cir. 1998). Also amendment with the permission of the Court. If the right to amend had been cut off, either by a prior amendment,

service of a responsive pleading or passage of 20 days if no response is permitted, the pleader may amend only with leave of Court. Rule 15 (a) instructs that leave of court is to be "freely given when justice so requires." See Moore's Federal Practice, 15.14[1](Matthew Bender 3d ed). Forman v. Davis 371, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962), see Bryant v. Dupree 252 F. 3d 1161, 1165 (11th Cir. 2001); Popp Telecom v. American Sharecom Inc., 210 F.3d 928, 943-944 (8th Cir. 2000); Shane v. Fauver, 213 F.3d 113, 115-117 (3d Cir. 2000).

Plaintiff cites Spring Hill Lighting & Supply Company, Inc v. Square D Company, Inc., 662 So. 2d 1141 (Ala. 1995) which Alabama Supreme ruled that state officials can be sued in their individual capacity for their intentional wrongful conduct involved in the state competitive bidding process. These illegal actions include fraud, conspiracy etc.

Wherefore, Plaintiff request your Honor issue an Order for all future filings be mailed to Plaintiff in a timely manner. Also for your Honor to accept Plaintiff's Supplement Motion in Opposition to the Defendant's Motion to Dismiss filed on January 19, 2007 received by Plaintiff on January 25, 2007.

Respectfully submitted,

 1-29-07

Curtis Duncan
Plaintiff, Pro Se
C&J Associates, Pest Control
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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2007, I have served a true correct copy of the above and foregoing by first class, United States mail, properly address and postage prepaid, or hand delivered on defendants as follow:

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Curtis Duncan 1-29-07

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Received 1/25/07
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